

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GEORGE BOYCE,

**Plaintiff(s),**

## ORDER

CV05-1596 (DGT) (WDW)

ALLIED INTERSTATE, et al.,

## Defendant(s).

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**WALL, Magistrate Judge:**

Before the court are the plaintiff's motion for a protective order and the defendant's cross motion to compel. The underlying issue is production of an audio tape of a telephone conversation between the plaintiff and a representative of the defendant, recorded prior to the start of the litigation. The plaintiff seeks an order permitting him to turn over the tape after the defendant's deposition, and the defendant seeks an order compelling immediate production of the tape as part of initial disclosure. The plaintiff's order is granted and the defendant's cross motion is denied as moot.

The plaintiff has not refused to produce the tape, but merely seeks to control the timing of the production. This court agrees with the reasoning in *Poppo v. AON Risk Servs.*, 2000 U.S. Dist. LEXIS 17588 (S.D.N.Y. 2000), and with the ruling entered by Magistrate Judge J. Orenstein in CV 04-5410, and grants the plaintiff's motion for a protective order allowing him to withhold production of the tape until the completion of the defendant's deposition.

/s/ William D. Wall

WILLIAM D. WALL

## United States Magistrate Judge